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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 01st February, 2016

+ **FAO 102/2001**

MADHU MARWAHA & ANR Appellant

Through: Mr. Puran Chand, Adv. proxy
counsel for Mr. Sanjeev Mehta,
Adv.

versus

DAL CHAND & ANR. Respondents

Through: Mr. A. K. Soni, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 17.05.1989, at about 07:30 PM, an accident occurred involving a three wheeler scooter bearing registration no.DBR-4032 (TSR) in the area of Ramjas School on public road from Karol Bagh to Shalimar Bagh. The TSR was driven by the first respondent herein and was carrying as passengers two persons, namely, Balram Marwaha and his office colleague Neelam. Whilst Neelam suffered injuries, Balram Marwaha died as a result of injuries sustained by him. His legal heirs, now the appellants, alongwith Smt. Kamla Devi (mother of the deceased) brought claim petition under Section 166 of Motor Vehicles Act, 1939 (MV Act, 1939) which was registered as suit no.326/1989. Besides the above said respondent (driver), second respondent herein

(insurance company) was also impleaded and, upon notice, appeared before the tribunal to contend that its liability in terms of the insurance policy was restricted to ₹15000/- only.

2. The claim petition was inquired into and resulted in judgment dated 24.08.2000 whereby the tribunal granted ₹2,59,200/- as compensation in favour of the claimants adding 10% per annum as interest from the date of filing of the petition till realization. During the course of inquiry, on the application of the claimants, an amount of ₹15,000/- had been paid by the insurance company on the principle of no fault liability. The contention of the insurance company that its liability was limited under the policy was upheld and the said amount (interim compensation) having already been paid, it was allowed to be adjusted and the first respondent herein was directed to pay the balance compensation to the claimants.

3. By appeal at hand, the claimants challenged not only the quantum of compensation but also the findings that the liability of insurance company was limited i.e. the finding that it was not required to pay the balance amount to the claimants.

4. Though the appeal was preferred in February, 2001 it has remained on board for the last 15 years. Going by the proceedings recorded over the period, most of the blame for delay will have to be taken by the appellants and/or their counsel. Even today, a request was made on their behalf through Mr. Puran Chand, Advocate for adjournment on the ground that the learned counsel are out of station. It is noted that there are two advocates who had been appearing on the earlier dates on behalf of the appellants. It is not explained as to why

not even one of them could have been present to assist the court in adjudication upon this, one of the oldest appeals on the board of the court.

5. Having heard the learned counsel who are present and having gone through the brief synopsis of arguments which was earlier filed, it is found by this court that the grievance as to the computation of the compensation is correct. The deceased was born on 01.05.1948 and the death having occurred on 17.05.1989, he was 41 years old at the relevant time. Having regard to the dicta in *Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, multiplier of 14 should have been adopted. Since the calculation of loss of dependency has been made by the tribunal on the basis of multiplier of 12, suitable rectification will have to be undertaken by this court.

6. As per the evidence adduced, duly taken note of by the tribunal in the impugned judgment, it was proved that the deceased was an employee of railway, his salary certificate (Ex.PW3/B) showing that his income was ₹2708/- per month. Though, further claim was made that he was earning additionally as writer of some books, no strict proof was led in that context. Thus, the tribunal was justified in assuming the income at ₹2708/- per month. Indeed, given the facts that he was a railway employee, the element of future prospects required to be added. Given the age when death occurred, future prospects to the extent of 30% deserves to be added [(*Sarla Verma (Smt.) & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121)].

7. In this view, the income of the deceased will have to be worked out to ₹3520/- per month. Since the number of the dependants

(claimants who filed the petition before the tribunal) was three, deduction on account of personal and living expenses to the extent of 1/3 would have to be factored in to arrive at the monthly loss of dependency. By this reckoning, the monthly loss of dependency comes to ₹2347/-. On the multiplier of 14, the total loss of dependency comes to $(2347 \times 12 \times 14)$ ₹3,94,296/-, rounded off to ₹3,95,000/-.

8. Since the tribunal did not award any non-pecuniary damages, it is the duty of this court to add that element. Having regard to the date of the accident and the facts and circumstances of this case noted above, non-pecuniary damages in the sum of ₹50,000/- on account of loss of consortium, ₹50,000/- on account of loss of love & affection, ₹10,000/- on account of funeral expenses and ₹10,000/- on account of loss of estate are hereby added. The total compensation, thus, payable to the appellants comes to ₹5,15,000/-.

9. Having regard to the conduct of the claimants as noted in the initial part of the judgment, the enhanced portion of compensation shall carry interest @ 6% per annum from the date of this judgment till realization.

10. Needless to add that the claimant shall be entitled to recover the interest levied by the tribunal on the amount thereby awarded in the impugned judgment.

11. The entire enhanced amount shall be payable to the first respondent, she being the widow.

12. On the question of limited liability, the learned counsel for the insurance company submitted, and this court finds substance in the said

submission, that, if at all someone had to be aggrieved, it was the registered owner of the vehicle (first respondent). The said party/respondent, though duly noticed and having been given opportunity to contest, did not avail of the same nor brought challenge to the direction by way of any independent appeal.

13. The finding recorded that in terms of the insurance policy the liability of the insurance company is limited, is based on the following reasoning:-

“ The claim of the Respondent/Insurance is that it has a limited liability as per the policy because a sum of ₹30/- has been charged per passenger by the Insurance Company and as per the tariff the limited liability of the company when a premium of ₹30/- per passenger is charged comes to ₹15,000/-. The counsel for the petitioner has submitted that Sh. D.M. Sharraa, Official Assistant of the Insurance who proved the policy Ex.RW1/A has not turned up for cross-examination so, his statement cannot read in evidence. The Counsel for petitioner further argued that since the Owner was not served with a notice to produce the original policy. So, the carbon copy cannot be taken into consideration and has not been properly proved. According to the counsel for the petitioner the insurance company was duty bound to serve the notice to the respondents/insurer respondent to produce the Original Insurance Policy for proving the same in the court and in case the owner had failed to produce the copy then the secondary evidence in the form of Carbon Copy cannot be lead by the insurance company. These arguments cannot be accepted in as much as the respondent/Dal Chand who was the owner has appeared in the witness box and he himself has filed photocopy of the policy which was issued to him and same has been exhibited as RW1/P1 so, issuing of notice to the respondents is not necessary in this case when respondent the registered owner is contesting the petition and it is the duty of the respondent/Owner to produce the Original Policy of the Insurance to prove that he had got a comprehensive policy in his favour issued by the Insurance Company, Since the owner admitted the policy

Ex.RW1/P1 to be the photocopy of the original received by him and this policy Ex.RW1/P1 and Ex.RW2/B one produced by the insurance are similar one being carbon copy and other being photocopy so the duty cast on the insurance to issue a notice to the registered owner to produce the original policy is over and the copy produced by the Insurance Company or Photocopy produced by the registered owner can be taken into consideration and have rightly been exhibited.

Now from the perusal of the copy of the policy it can be seen, that a sum of Rs.424/- has been received by the Insurance Company as total premium, the split up of this amount is 80/- as Basic Premium, 247/- as insured estimated value of the including accessories (IEV), a sum of Rs.146 as third party risk only (TP) total amount of Rs.473 and by deducting a sum of Rs.49/- on account of no claim discount (NCB) the total premium comes to Rs.424/- which has been paid by the insurer to the insurance company vide Ex.RW2/B and Ex.RW1/P1. The claim of the insurer respondent no.1 that his vehicle is comprehensively insured is falsified from the policy because a sum of Rs.146 has been charged on account of 3rd party risk and this amount has been split up by the insurance company to be representing a sum of Rs.90/- on account of 3 passenger meaning thereby, a sum of Rs.30/- per passenger and so the insurance company has claimed at the liability of the insurance company is limited to Rs.15,000/- only as per tariff Ex.RW2/A. The contention of the Insurance Company that it has limited liability of Rs.15,000/- only in this case stands proved.”

14. The argument that the insurance company had not served a notice on the insured to produce the original insurance policy is frivolous. The document produced by the insured himself showed that the tariff paid for taking insurance cover, bound the insurance company with a limited liability to the extent of ₹15,000/- per passenger.

15. In my view, the finding returned and the direction given by the tribunal cannot be faulted. The contention, is thus, rejected.

16. Though the liability of the insurance company has been found to be limited, law laid down by the Supreme Court in *Oriental Insurance Company Ltd. vs. Cheruvakkara Nafessu & Ors.*, 2001 ACJ 1 following the view taken in *New Asiatic Insurance Co. Ltd. vs. Pessumal Dhanamal Aswani*, 1958-65 ACJ 559 (SCC), commends that it be directed to indemnify the third party and granted recovery rights against the insurer.

17. In view of above, it is just and proper that the insurance company be asked to satisfy the award, but with a liberty to get it recovered from the first respondent herein by appropriate proceedings before the tribunal. Ordered accordingly.

18. The appeal is, thus, allowed to the effect that the appellants/claimants are entitled to get enhanced compensation in the sum of ₹5,15,000/-. The insurance company is directed to deposit the amount payable in terms of the judgment with the tribunal within 30 days failing which the appellants shall be entitled to take out appropriate execution proceedings before the tribunal. After the insurance company has satisfied the award, it may take out appropriate proceedings before the tribunal to recover the amount paid in excess of limited liability from the first respondent.

19. The appeal stands disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 01, 2016/ssc